

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * * * *

COUNTRY JOE STEVENS,

)

Plaintiff,

)

3:11-cv-00558-LRH-VPC

v.

)

O R D E R

ALYSON JUNGEN, *et al.*,

)

Defendants.

)

Before this Court is the Report and Recommendation of U.S. Magistrate Judge Valerie P. Cooke (#59¹) entered on August 15, 2013, recommending denying Defendants' Motion for Summary Judgment (#48) filed on January 14, 2013. Plaintiff filed his Non-Objection to Report and Recommendation by U.S. Magistrate Judge (#60) on August 22, 2013, and Defendants filed their Objections to Magistrate Judge's Report and Recommendation #59 (#61) on September 3, 2013. Plaintiff filed his Opposition to Defendants' Objection (#63) on September 5, 2013.

This action was referred to the Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1) and Local Rule 1B 1-4 of the Rules of Practice of the United States District Court for the District of Nevada.

The Court has conducted its *de novo* review in this case, has fully considered the non objection of Plaintiff, the objections of Defendants, Plaintiff's Opposition to Defendants' Objections, the

¹Refers to court's docket number.

1 pleadings and memoranda of the parties and other relevant matters of record pursuant to 28 U.S.C. §
2 636 (b) (1) (B) and Local Rule IB 3-2. The Court determines that the Magistrate Judge's Report and
3 Recommendation (#59) entered on August 15, 2013, should be recommitted to the Magistrate for the
4 following reasons:

5 In Defendant Kenneth Corzine's objection to the Magistrate Judge's Report and
6 Recommendation (#59), the defendant supplements previous evidence (exhibits to #48) with new
7 evidence, a declaration set forth in Exhibit A to Defendant's objection. The Court's view is that this
8 evidence definitely should have been submitted to the Magistrate Judge in support of the Defendants'
9 Motion for Summary Judgment (#48) and good cause has not been shown for its omission; however,
10 the declaration is material to the Magistrate Judge's findings and relates to other evidence which was
11 before the Magistrate. Recomittal is therefore warranted. 28 U.S.C. § 636(b)(1)(C); *United States*
12 *vs. Howell*, 231 F.3d 615, 621-22 (9th Cir. 2000).

13 Additionally, it appears that Defendant Rexwinkle was granted time by the Magistrate Judge
14 to refile a motion for summary judgment, and that matter is readily combined with the Corzine matter
15 referenced herein.

16 Good cause appearing, no action is taken upon the Magistrate Judge's Report and
17 Recommendation (#59) at this time and this matter is recommitted to the Magistrate Judge to determine
18 whether the supplemental evidence offered by Defendant Corzine should be considered in this matter
19 and whether it may have any effect upon the Magistrate Judge's Report and Recommendation.

20 IT IS FURTHER ORDERED that this matter may be considered in conjunction with any
21 motion for summary judgment filed on behalf of Defendant Rexwinkle.

22 IT IS SO ORDERED.

23 DATED this 25th day of September, 2013.



25 LARRY R. HICKS
26 UNITED STATES DISTRICT JUDGE